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Attorneys for Plaintiff
J & J Sports Productions, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK

J & J SPORTS PRODUCTIONS, INC., **Plaintiff,** **v.** **BRUTTI'S, LLC, a Virginia Corporation, d/b/a MANSION ALLURE & BRUTTI'S, and JOHN DOE** **Defendants.**	**Case No. 2:14-cv-00269-RAJ-TEM** **PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

STATE OF CALIFORNIA)
) ss:
COUNTY OF SANTA CLARA)

I, JOSEPH M. GAGLIARDI, being duly sworn, deposes and states the following:

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1. I am the President of Plaintiff, J & J SPORTS PRODUCTIONS, INC., and as such I am fully familiar with the facts, circumstances, and proceedings heretofore had herein.

2. I make this affidavit in support of Plaintiff's request to recover statutory damages, plus attorneys' fees, investigative costs, and interest in the within request for judgment by default.

3. Our company J & J Sports Productions, Inc., is a closed-circuit distributor of sports and entertainment programming. Our company purchased and retains the commercial exhibition licensing rights to the *Manny Pacquiao v. Timothy Bradley, WBO Welterweight Championship Fight Program* (hereinafter "Program") which was broadcast on Saturday, June 9, 2012. Our company thereafter marketed the sub-licensing (commercial exhibition) rights in the Program to our company's commercial customers (i.e., casinos, racetracks, bars, restaurants, and nightclubs).

4. Simultaneously with the advent of pay-per-view programming, we began to experience a serious erosion in the sales of our own proprietary programming to our commercial customers throughout the United States of America. To protect ourselves, we endeavored to find out what was the basis for the erosion and determined from our customers that the cause of the erosion of our customer base was the rampant piracy of our broadcasts by unauthorized and unlicensed establishments (signal pirates).

5. In response, we embarked upon a nationwide program to police our signals for the purpose of identifying and prosecuting commercial establishments which pirate our programming (including the *Manny Pacquiao v. Timothy Bradley, WBO Welterweight Championship Fight Program*, the subject program involved in this lawsuit).

6. Specifically, J & J Sports Productions, Inc., retained, at considerable

expense, auditors and law enforcement personnel to detect and identify signal pirates. To ensure that only illegal locations were visited by the auditors, our company compiled our confidential list of customers (authorized and legal locations) who paid the required license fee to broadcast the Program, and this list was distributed to participating auditing and law enforcement agencies in strict confidence.

7. The above-referenced *Program* contained several televised under-card bouts, and color commentary, along with the main event prizefight between Manny Pacquiao and Timothy Bradley. As set forth within the sworn Affidavit of Darren Shelby, it was Bradley highlights of prior events that was observed by Mr. Shelby as being *unlawfully* exhibited by the establishment doing business as “Mansion Allure” on June 9, 2012. As at no time did this establishment ever lawfully license the Program from our company for such a purpose.

8. Domestic commercial establishments, which contract with us, were required to pay to my company a commercial sublicense fee to broadcast the *Program*. This sublicense fee for the *Program* was based on the capacity of the establishment and varies for each event. For example, for this particular event, if a commercial establishment had a maximum fire code occupancy of 150 persons, the commercial sublicense fee would have been $4,200.00 (Please see Exhibit 1 attached hereto and made part hereof).

9. It is essential that I communicate to the Court that to the best of my knowledge our programming is *not* and cannot be mistakenly, innocently or accidentally intercepted. Some methods that a signal pirate can unlawfully intercept and broadcast our programming are as follows without limitation:

A. The use of a "blackbox", “hotbox”, or “pancake box” which is purchased for a fee and when installed on a cable TV line will allow for the descrambled reception of a pay-per-view broadcast, or

B. The use of a "smartcard" or "test card" or "programming card" which is purchased for a fee and when installed on a DSS satellite receiver line will allow for the descrambled reception of a pay-per-view broadcast, or

C. The purposeful misrepresentation of a commercial establishment as a residential property to allow the fraudulent purchase of a pay-per-view (or prohibited) programming at the residential rate, or

D. The use of illegal cable drop or splice from an apartment or home adjacent to the commercial establishment premises (which would purchase the broadcast at a residential price and divert the program to the commercial establishment), and/or

E. The purchase of other illegal unencryption devices, and the purchase of illegal satellite authorization codes which are readily available on the internet, in trade publications, and through "word of mouth".

10. Turning these facts to the matter before the Court I have been advised by counsel that the Court has wide discretion in the awarding of statutory damages for the nefarious, illegal and debilitating activities of signal pirates which are injurious to our company and our lawful customers.

11. It is respectfully submitted to this Honorable Court that the unchecked activity of signal piracy not only has resulted in our company's loss of several millions of dollars of revenue, but also has a detrimental effect upon lawful residential and commercial customers of cable and satellite broadcasting whose costs of service are increased significantly by these illegal activities, including the depravation of tax revenue to the communities where our potential customers reside, and the denial of

benefits such tax revenue would provide the residents of such communities.

12. We, at J & J Sports Productions, Inc., believe that the persistent signal piracy of our programming costs our company, our customers, and their communities, millions of dollars annually resulting in part, from the perceived lack of consequences (including nominal or minimal damage awards by the Courts who hear our cases) for such unlawful interception and exhibition by the commercial signal pirates.

13. For these reasons I ask this Honorable Court to grant the **maximum** allowance for statutory damages due to the fact that such actions are *per se* intentional and do not and cannot occur without the willful and intentional modification of electronic equipment, the willful and fraudulent misrepresentation of a commercial establishment as a residential one, the removal of cable traps or devices designed to prevent such unauthorized exhibits, or other willful and/or international acts purposely designed to obtain our programming unlawfully.

14. I am also troubled by the fact that the Courts have placed undue weight upon whether the *promotion* of programming by the signal pirates (rather than the *exhibition* of the programming itself) was done willfully and/or for commercial benefit. I would ask the Court to recognize that the willful and purposeful acts necessary to intercept and exhibit the programming precede whatever steps are, or are not taken, by the pirate establishment to promote our programming to their customers.

15. I would also ask the Court to recognize that the pirates do not generally advertise the fact that they intend to exhibit our programming unlawfully to the public for the practical reason that they wish to avoid the unessential risk of detection. This of course does not preclude the very real possibility fact that the unlawful exhibition may well have been promoted by word of mouth or advertising that went undetected by the auditors, to their own customers to increase their financial gain on the night our

fights are broadcast at their establishment.

16. In addition, it is extremely unlikely that a pirate establishment would increase the costs of food or drink on the evening they broadcasting one of our programs unlawfully. In my personal experience gained through many years in the promotion industry, it is most uncommon that even our legal locations would employ such a method to recover some of our commercial license fee back from their own customers. I would point out however that since our auditors do not benchmark the prices charged for food or drink at the pirate locations subsequent to conducting the field surveillance on the evening our programming is broadcast, it is undetermined whether the prices paid by an auditor at a pirate location on fight night are in fact less than or equal to the normal prices charged by the pirate establishments.

17. In this instance, I would further request that the Court take notice that the instant pirate establishment obtained a cover charge from its patrons to view our company's program. As noted within the sworn affidavit of the auditor, payment of the twenty dollar ($20.00) cover charge being collected from customers was a prerequisite for entry to the establishment while the exhibition of our programming was taking place.

18. Clearly, this establishment with multiple television monitors, and a physical location in a major metropolitan area, had no justification to steal our programming and exhibit it for its own financial benefit, except to deny our company the commercial license fee to which was rightfully entitled.

WHEREFORE I respectfully request that this Court grant our request for enhanced statutory damages and our prayer for actual damages, plus our legal costs along with the attorneys' fees counsel has requested, and that such amounts be awarded against each of the defendants named in this action and in our favor.

Respectfully submitted,

Dated: August 14, 2014

JOSEPH M. GAGLIARDI President
J & J Sports Productions, Inc.

Notarization: Please see attached.

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CALIFORNIA JURAT WITH AFFIANT STATEMENT
GOVERNMENT CODE § 8202

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

1 ______
2 ______
3 ______
4 ______
5 ______
6 ______

Signature of Document Signer No. 1 | *Signature of Document Signer No. 2 (if any)*

State of California

County of Santa Clara

Subscribed and sworn to ~~(or affirmed)~~ before me on this 14 *Date* day of August *Month*, 2014 *Year*, by

(1) Joseph M. Gagliardi

(2) [signature]

Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

SHARON CUNNINGHAM
Commission # 1956322
Notary Public - California
Santa Clara County
My Comm. Expires Nov 10, 2015

Place Notary Seal Above

Signature [signature]
Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Plaintiff's Affidavit

Document Date: August 14, 2014 Number of Pages: seven

Signer(s) Other Than Named Above: none

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Mansion Allure & Brutti's
6-9-2012

EXHIBIT 1

CLOSED CIRCUIT EVENTS LLC.
www.ggsportstv.com

CALL TO ORDER: 1-888-258-7115

Saturday, June 9, 2012 9pmET/6pmPT

FROM: MGM Grand, Las Vegas, Nevada, United States

12 Rd. WBO Welterweight Championship title

Manny Pacquiao vs. Timothy Bradley

Plus

12 Rd. IBF Welterweight Championship title

Mike Jones Vs Randall Bailey

Jorge Arce vs Jesus M Rojas

Fights are subject to change

A NON-REFUNDABLE MINIMUM GUARANTEE OF $2200.00 Flat Fee.

MINIMUM SEATING	RATE
0 – 100	$2200.00
100- 200	$4200.00
200 – 300	$6200.00
300 – 400	$8200.00
401 – 500	$10200.00

Casinos Prize See Casino Sales Manger

Minimum room capacity 500 People per casino.

A NON-REFUNDABLE MINIMUM GUARANTEE OF $20,200.00 Flat Deal.

- Directv and Dishnetwork Activation is included AD $25 FOR DIRECTV HD
- Commercial Public Viewing and Business Viewing pricing for this event is based on Fire Code Occupancy.
- $200 Directv Activation is Included AD $25 FOR HD

Closed Circuit Information

All commercial locations that have been licensed to carry this event must have a valid license agreement from the OFFICIAL CLOSED-CIRCUIT PROVIDER, G&G Closed Circuit Events Inc. **There is** NO OTHER LEGAL LICENSOR. **Any location that has not been licensed by this provider will be considered a** PIRATE and TREATED ACCORDINGLY.

For further information regarding multiple locations packages contact

Art Gallegos
G&G Closed Circuit Events LLC.
Vice President
1-888-258-7115

1-888-258-7115

2380 South Bascom Avenue, Suite 200 • Campbell, CA 95008 • Tel: (408) 369-8022 • Fax: (408) 369-8096